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TO AMEMBASSY ADDIS ABABA

INFO AMCONSUL ASMARA

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E.O. 11652: N/A

TAGS: ASEC

SUBJECT: PROTECTIVE SECURITY TEAM FOR ASMARA, EPMG
RESPONSE ON IMMUNITIES

REF: EMBASSY'S 14593 (DECEMBER 18, 1975)

1. WHEN MARINE SECURITY GUARDS ARE AUTHORIZED TO PROVIDE PERSONAL PROTECTION OF A CHIEF OF MISSION OR PRINCIPAL OFFICER, THIS ASSIGNMENT IN ITSELF AUTHORIZES ESPECIALLY SELECTED AND TRAINED MARINES TO PROVIDE BODY GUARD DUTIES UNDER THE SUPERVISION OF A SECURITY OFFICER. REFER MEMORANDUM OF UNDERSTANDING DATED DECEMBER 27, 1972, UNDER SECTION III.F.2.

2. UNDER THESE TERMS AND WHEN OFFICIAL DUTY IS INVOLVED AS A GENERAL RULE, THE USG WILL ENTERTAIN AND PROCESS THIRD-PARTY CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT. UNDER THIS ACT, THE USG IS NO GUARANTOR, BUT WILL EFFECT A PROPER SETTLEMENT, IF THE NECESSARY CRITERIA ARE

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PRESENT. ONE IMPORTANT CRITERION IS WHETHER A PRIVATE

PARTY WOULD BE LIABLE FOR DAMAGES UNDER SIMILAR CIRCUMSTANCES UNDER THE LAW OF THE PLACE WHERE THE INJURY OCCURRED.

3. THE SECOND CONSIDERATION IS THAT UNDER CUSTOMARY INTERNATIONAL LAW AS CODIFIED IN THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS, MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL STAFF OF A DIPLOMATIC MISSION (A CATEGORY THAT COVERS MARINE SECURITY GUARDS) ARE ENTITLED TO DIPLOMATIC IMMUNITY FROM CIVIL AND ADMINISTRATIVE JURISDICTION ONLY WITH RESPECT TO THOSE ACTIONS FALLING WITHIN THE SCOPE OF THEIR OFFICIAL FUNCTIONS. FOR ANY OTHER ACTIONS THEY ARE LIABLE FOR CIVIL SUIT, ALTHOUGH NOT CRIMINAL PROSECUTION. SINCE THE AGREEMENT BETWEEN STATE AND THE USMC ANTICIPATES THAT BODYGUARD ACTIVITY, WHEN PERFORMED UNDER THE TERMS OR REFERENCE, IS OFFICIAL IN NATURE, THERE IS CONSIDERABLE CERTAINTY THAT INNOCENT BYSTANDERS WILL HAVE RECOURSE UNDER THE FEDERAL TORT CLAIMS ACT. CONSEQUENTLY NO FURTHER LEGALLY BINDING COMMITMENTS NEED OR SHOULD BE MADE REGARDING MSG COVERAGE OF THE ACTIVITIES OF THE MARINES IN THIS INSTANCE.

4. HOWEVER, THERE IS ONE FURTHER FACTOR, SINCE THE MARINE BASIC STAFF IMMUNITY IS DERIVED FROM THEIR STATUS IN THE EMBASSY AS OUTLINED IN PARAGRAPH NO. 3 ABOVE, IT IS IMPORTANT TO DETERMINE WHETHER THIS IMMUNITY IS EXTENDED ALSO TO MEMBERS OF THE CONSULATE GENERAL. IN OTHER WORDS, DOES THE HOST GOVERNMENT ACCEPT THE MARINES ASSIGNED TO THE CONSULATE GENERAL AS MEMBERS OF THE EMBASSY STAFF BY EXTENSION OR HAS ANY SPECIAL PRECEDENT OR ARRANGEMENT BEEN AGREED UPON BY THE HOST GOVERNMENT TO SO RECOGNIZE PERSONNEL ASSIGNED TO THE CONSULATE GENERAL STAFF? KISSINGER

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